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Subject: Outline for discussion en route to Swinomish
Date: Sunday, August 09, 2015 10:14:10 PM

Hi Angela,

Hope you had a good weekend. I wanted to get an overall summary to you of where I think we are with respect to Swinomish, and hopefully this outline can help us structure how we brief Dan on the ride up to Swinomish tomorrow morning:

- 1) Original workplan language. I will bring copies of the original proposed workplan submitted by the Swinomish Tribe in Years 1-5 of the NWIFC LO program. As a reminder, NWIFC requires recipients to submit a proposal for each year of funding, even if it is just an updated version of a proposal submitted in prior year(s) for an ongoing project.
- 2) Main programmatic concern. The issue we raised in our May 2015 comments on the proposed workplan currently before us for review, in essence, remains our basic concern: that the proposed work (sharpened and amplified media campaign targeting the agriculture sector) veers sharply away from consistency with the Action Agenda. The funding authority for this work is to support implementation of the Action Agenda. In our view the Action Agenda reflects a collaborative approach to addressing issues on working lands.
- 3) Basis for EPA's authority to disapprove work and disallow costs. Discussions with ORC and GIAU indicate that the "substantial involvement" term and condition in all Puget Sound cooperative agreements enables us to disapprove work produced under an LO subaward, and to disallow further costs associated with the project.
- 4) Technical review process. NWIFC subawards are subject to a modified peer review requirement, in which subawardees must, for certain kinds of major work products, establish a technical review process. NWIFC has not required Swinomish to establish a technical review process for this subaward, presumably because it did not consider the work products to be "major." However, it could be argued that this subaward generates products intended to give rise to major regulatory and/or policy decisions, and therefore trigger the technical review process requirement. Preliminary review by TMDL program staff indicate there are questions about how TMDL program data are interpreted and presented by the website. Preliminary review by CIPI also indicates more effective public communication and messaging approaches may be available.
- 5) Engage the Management Conference. The subawardee and lead organization contest EPA's view that the project is no longer consistent with the Action Agenda. The question could be put to Management Conference entities.
- 6) Options:
 - (a) No action; allow NWIFC to approve the proposed workplan and to approve deliverables to date.
 - (b) EPA requires that NWIFC convene and oversee a technical review process, with close participation from EPA
 - (c) EPA, under the "substantial involvement" T&C, convenes and oversees the technical review process
 - (d) PSP leads a Management Conference review of the deliverables to date and the proposed work
 - (e) EPA disapproves certain deliverables produced under the grant and disallows further costs on Year 5 workplan.